

**MINUTES**  
**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND**  
**PROGRAM**

**August 23, 2007**

**COMMISSIONER'S CONFERENCE ROOM**  
**IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET**  
**DES MOINES, IOWA**

Susan Voss, Chairperson, called the Iowa UST Board meeting to order at 10:03 A.M. A quorum was present. Roll call was taken with the following Board members present:

Jim Holcomb  
Jacqueline Johnson (via telephone)  
Nancy Lincoln (via telephone)  
Doug Beech  
Stephen Larson (for Michael Fitzgerald)

Also present were:

David Steward, Attorney General's Office  
Scott Scheidel, Program Administrator  
Lacey Skalicky, Program Administrator's Office  
James Gastineau, Program Administrator's Office  
Elaine Douskey, Iowa Department of Natural Resources

**APPROVAL OF PRIOR BOARD MINUTES**

The minutes from the July 19, 2007 Annual Strategic Planning Session were reviewed. Mr. Beech moved to approve the minutes, Mr. Holcomb seconded the motion, and by a vote of 5-0, the minutes were approved.

**CLOSED SESSION**

Ms. Voss noted there were no matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. Therefore no closed session convened.

**PUBLIC COMMENT**

Ms. Voss requested any comments from the public present. There were no comments at this time.

## **BOARD ISSUES**

### **A. Fiscal Year 2008 Goals**

Mr. Scheidel presented a memo to the Board summarizing the goals for fiscal year 2008, as discussed at the July Board meeting. He included a table to provide quarterly updates regarding the progress of each goal throughout the year. Goals listed included:

1. Close 165 claims by 6/30/08
2. Hold 100 corrective action meetings by 6/30/08
3. Evaluate Loss Portfolio Transfer (LPT) opportunity presented by PMMIC, as well as, review Board's LPT strategy in general
4. Coordinate with the Department of Natural Resources (DNR) to implement a plastic water line (PWL) policy that reflects the experience in Iowa and other states and the ISU study, hopefully resulting in a cost savings by 6/30/08
5. Coordinate with DNR to put formal guidelines on recent water well closure orders from DNR legal staff by 12/31/07
6. Follow through on the update of Tier 2 model with DNR
7. Enter into no further action (NFA) funding agreement with DNR and evaluate risk transfer mechanism for benefit to Board's liability under the agreement

Because so many of the goals involved DNR cooperation, Ms. Voss inquired if the DNR had reviewed the Board's goals with their staff. Elaine Douskey, UST and LUST Section Supervisor at DNR, explained that she and Tim Hall, Bureau Chief, had discussed the Tier 2 software issue and the NFA funding agreement. Mr. Scheidel stated that monthly meetings between DNR and the Administrator's Office were scheduled through the end of the year to discuss the progression of those goals that required Board and DNR coordination.

### **B. Rules for RBCA Changes Update**

Mr. Scheidel reported to the Board that there was nothing new to report regarding the RBCA changes from the Administrator's Office; however he thought Ms. Douskey might have an update to report during the DNR Update.

### **C. Loss Portfolio Transfer Review**

It was noted that Tom Norris from Petroleum Marketers Management Insurance Company (PMMIC), had inquired about the Board's interest in considering another LPT of UST Fund claims to PMMIC for UST Fund claim sites which currently hold PMMIC insurance on their active UST's. The Board had decided to review its LPT strategy. Mr. Scheidel presented the Board with copies of documents from the LPT completed in late fiscal year 2007 for 10 UST sites. Included in the documentation in the Board packets were the proposal, the agreement, the claimant agreement including a waiver and general release of the Board, and a pros and cons worksheet developed during the negotiation of the transfer last Spring. Also, Mr. Scheidel included a copy of the Board's LPT rules from the Administrative Code and various marketing materials regarding the general use of LPT transactions in various insurance-related situations. Mr. Scheidel explained to the Board a few examples of the regular usage of LPT's within the

insurance industry, including workers compensation, general liability, large fleet auto liability, etc., often associated with a merger of businesses. He explained that the point of a LPT was to put a fixed amount on a loss creating a known liability rather than maintaining an unknown amount of liability. He stated the downside included the fact that the known amount was generally higher than the projected reserves on a specific set of claims due to the nature of the risk. Another benefit to the Board by completing an LPT would be the cessation of operations with regard to those transferred claims, as the liability would be removed from the Board upon transfer. Mr. Scheidel explained that a LPT would be one way to end the UST Program in its entirety, in theory, because the liabilities would be extinguished from the Board's duties if all claims under the current program were transferred to another entity. Mr. Steward opined that such a transfer should include agreements and waivers signed by all UST Fund claimants.

Ms. Voss inquired from Mr. Norris if the Board should anticipate a formal proposal from PMMIC within the next 6 months or so. Mr. Norris responded that PMMIC was currently interested in the Board's reception of the concept initially; however a formal proposal could follow in short order, if the Board was open to the idea.

Additionally, Mr. Norris had provided for the Board a snapshot of expenses from the 10 claims previously transferred from the Board to PMMIC to track their expenses compared to the Board's transfer amount to see how close or far off the agreed transfer amount was, although the discrepancy would not be known until all 10 claims were closed and received NFA certificates from the DNR.

Mr. Scheidel explained that he wanted to give the Board as much documentation regarding LPT's to incite any questions the Board members might have about the intent or the process of a LPT. Ms. Voss voiced that she would like more time to look over the documents and develop questions about it. Mr. Beech stated he was concerned that the calculations for the potential transfer sites could not be accurately projected until the rules regarding the RBCA software changes were written and the issue of plastic water lines was resolved. Also, he felt the set of claims proposed for transfer should be reviewed to evaluate whether or not the Fund would be left with an unfortunate set of more costly claims – and millions of dollars fewer remaining to cover them. He suggested that any future LPT should include some representation of more difficult claims in addition to those claims more easily projected and resolved. Mr. Norris acknowledged Mr. Beech's concerns about a package of claims, and he stated that with regard to non-PMMIC insured sites, PMMIC would be open to submitting a proposal for all UST claims. He noted that the current PMMIC proposal in concept was for PMMIC-insured sites because of the current relationship between PMMIC and those site owners, as clients.

Mr. Steward noted that the open records laws stated that any proposal submitted by PMMIC would be discussed in open session, unless PMMIC requested in writing that the proposal be discussed in closed session due to the fact that the release of the proposal to the public would provide an advantage to competitors and serve no public purpose. If the Board found those two conditions to be satisfied, then the Board could make a finding to go into closed session to discuss the proposal. However, he explained the Board would also have to discuss the practicability of seeking bids for any set of claims to be transferred, and that discussion would have to be held in open session.

Responding to a question from Mr. Beech, Mr. Steward stated that under the current law, the Board was allowed to initiate a LPT by packaging a set of claims of selected sites, as well as, to respond to a proposal for claims selected by a third party. Mr. Holcomb inquired whether the Board had access to experts who could effectively evaluate a larger LPT on the Board's behalf. Mr. Scheidel and Mr. Steward both responded that Aon could provide expertise depending on the scope of the assistance needed.

Mr. Scheidel next explained that he included a copy of the rules governing the Board in the Board packets, and he stated the rules did not require a waiver and release from UST Fund claimants for their claims to be transferred via a LPT. Mr. Steward stated he included the waiver and release in the mini-LPT from last Spring, as documentation which confirms that claimants understand what they're agreeing to. Mr. Scheidel explained the rules did say the Board would have to evaluate the impact of a transfer on the rights of claimants. However, based on the fact that it would be impractical to assume that all claimants would sign a waiver and release of the Board, the rules allowed for the Board to complete a transfer in the absence of signed releases. Mr. Steward stated he would advise the Board against entering into a transfer without full disclosure and acceptance from claimants.

Ms. Voss suggested Board members formulate questions to submit to Mr. Scheidel for discussion at the next Board meeting.

#### **D. DNR Update**

Ms. Douskey stated that the DNR had scheduled two more RBCA training courses for December and January. Registration information was listed on the DNR webpage. Regarding the new legal position at the DNR, as discussed at previous meetings, the DNR had submitted a 28E draft agreement to the Attorney General's Office for review and discussion to finalize the language and present to the Board at a future Board meeting. Also, she stated the DNR had been focusing on sending out letters to site owners who had overdue RBCA Tier 1 and Tier 2 reports. Under the UST Section, the field offices met to review the UST inspection database, and an additional training course was held for inspectors in July.

Next Ms. Douskey reported the Environmental Protection Agency (EPA) had finalized the owner/operator training guidelines in August, and a provision of the federal Energy Policy Act required that states have an owner/operator training program in place by 2009. Also, she stated the rules regarding secondary containment and delivery prohibition were previously filed with the Environmental Protection Commission (EPC), and were in the public comment phase currently.

Ms. Douskey discussed the position of the LUST Section with regard to the plastic water line debate, stating that Rochelle Cardinale had been researching the issue for the LUST Section, and Ms. Douskey needed to obtain direction from DNR management regarding DNR staff involvement in this debate. Also, she discussed the abandoned well issue as discussed in August stating that the DNR had changed their process some by involving their legal department in communicating with owners of water wells to resolve those receptor problems. She expected the

DNR to become aware of water wells of concern through the documentation of site assessment upon receipt of RBCA reports.

Ms. Douskey reported that she had presented the recommendations of the Software Investigation Committee (SIC) to management at DNR, and the legal department advised that the implementation of the recommendations would require rule changes, for which she had senior staff working on the draft. Also, she had requested LaDon Jones write up a summary of the changes for understanding by laypersons. She expected the draft to be completed by the end of September, and she expected comment from stakeholders and subsequent discussion, therefore they may be presented to the Board at the October or November Board meeting.

Next Ms. Douskey discussed the 28E between the Board and the DNR drafted by the Administrator's and Attorney General's Offices regarding reopening sites which had previously received No Further Action certificates. She stated they were still trying to define what would constitute unreasonable risk to public health, and she said she was creating a document to outline the steps that DNR staff would take to evaluate the risk before requesting that a NFA site be reopened. Lastly, she reported that the LUST section had closed 167 sites during federal fiscal year 2007 to date, and the EPA goal set had been 130. She noted that two newly-hired staff had managed to review and catch up the backlog of approximately 160-170 monitoring reports for reclassification since June, and she was very pleased with their progress. However, she explained that their "bank" of potential sites to close for next year was now gone, and although the Board had listed an ambitious goal to close claims for fiscal year 2008, she pointed out that the appropriate closure of sites would require cooperation from all parties.

Mr. Scheidel inquired if she knew what the effective date of the RBCA rules would be, and she expected the process to last until January or February. Ms. Voss inquired about plastic water line discussion, and Ms. Douskey repeated that she needed to confirm with management how the LUST section would proceed on the issue. Mr. Gastineau offered additional information about the plastic water line issue from the State of Missouri, as studied by a technical advisory committee since March. This committee had already drafted recommended target levels for plastic water line receptors, as a result of investigating research papers and discussing the subject with representatives from the Iowa State University study. Additionally, Mr. Gastineau explained to the Board how the Iowa DNR had developed their target levels for plastic water lines several years ago. He stated the State had a technical advisory committee established in 1995, as a result of the newly-established RBCA program. The DNR was not part of the committee, and the group was broken down into subcommittees. One subcommittee set the standard target levels for certain receptors, and the numbers recommended were not agreed upon by the full committee. The first draft of rules for RBCA was met with significant public comment, and the revised rules were written over a very short period of time. Therefore, very little research was completed at that time, and as a result, the plastic water line receptor target levels were the same as that of another pathway. He stated the standard had come into question over the years since. Also, he stated that the committee working on behalf of the State of Missouri, included representatives from utilities, plastic water line industry, State DNR, the Hazardous Waste Section, etc., who had come up with draft numbers for the plastic water line pathway that were reasonable. He felt the Iowa DNR should consider their research as valid enough to consider adopting certain target levels, rather than repeating the efforts of their

Missouri counterparts. Mr. Gastineau also said he could draft a comparison of Iowa standards and Missouri standards and, possibly, South Dakota standards for the next meeting. He explained that no other states used numerical standards.

Mr. Beech inquired about the new RBCA rules, and how quickly could UST Fund claim reserves be reevaluated. Mr. Scheidel stated that based on the set of claims evaluated and the approach taken claims could be re-evaluated between 30 to 90 days.

#### **E. Administrator's Contract Renewal**

Mr. Scheidel included in the Board packet a copy of the Administrator's contract with Aon from 2004, as well as, the 1<sup>st</sup> agreement extension for one year. Mr. Steward previously had electronically mailed a draft of the 2<sup>nd</sup> agreement extension to Board members for review. Ms. Voss reported that Ms. Christiansen of the DNR had suggested the Board's annual goals set at the Strategic Planning Session be incorporated into the Administrator's contract. Mr. Steward explained to the Board that something of that nature would constitute an amendment to the original agreement, which would be separate from this currently drafted extension to the agreement. Additionally, he stated that proposal would have to be submitted to Aon for negotiation; also he explained that some goals developed at the annual meeting were not in the control of Aon, although to consider those goals, Aon could be evaluated over the next year to see that they cooperated fully to reach those goals. Mr. Scheidel stated that Aon negotiated similar terms with many of their clients, as a general practice, but would have to analyze what control Aon has over reaching goals and what are the benefits for exceeding or consequences of not meeting those goals. Mr. Steward pointed out that the current contract only required a performance review of Aon after the first two years of the contract, which was completed in the Fall of 2006. However, he also stated that Aon's performance may be evaluated by the Board at any time. He stated the amendment adding the goals would be an amendment to the 2004 agreement; however he explained that the extension needed to be approved or not approved as soon as possible to provide Aon with 60 days notice of renewal or non-renewal.

Mr. Beech entered a motion to extend the Administrator's contract with Aon for one year [ending December 31, 2008]. Mr. Larson seconded the motion, which was approved by a vote of 5-0.

#### **PROGRAM BILLINGS**

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services ..... (\$1,102.00)  
Consulting Services – August 2007 Credit for Licensing Program transferred
2. Aon Risk Services.....\$118,222.00  
Consulting Services – September 2007 (\$65,638.00)  
Claims Processing Services – September 2007 (\$52,584.00)

3. Aon Risk Services..... (\$1,102.00)  
Consulting Services – September 2007 Credit for Licensing Program transferred
4. Aon Risk Services.....\$107.94  
Reimbursement for HyVee lunch for Annual Strategic Planning Session  
July 19, 2007
5. Iowa Department of Inspections & Appeals.....\$1,002.00  
Administrative Hearings on behalf of the Iowa UST Program  
April – June 2007
6. Jackie Johnson .....\$122.40  
Mileage reimbursement for travel to Annual Strategic Planning Session  
At DMACC in Ankeny on July 19, 2007
7. Nancy Lincoln.....\$110.16  
Mileage reimbursement for travel to Annual Strategic Planning Session  
At DMACC in Ankeny on July 19, 2007

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Larson and a second by Mr. Holcomb, the billings were approved by a vote of 5-0.

### **MONTHLY ACTIVITY REPORT**

Mr. Scheidel noted that the July activity report, financial reports and opt-in report were in the Board packets. He noted changes to the activity report included the AST claims – all closed – were no longer reported and were replaced by unassigned revenue project claims, including tank closure contract claims and plastic water line contract claims. Also, he noted that he didn't receive corrective action meeting numbers for the meeting, so he would report totals next month.

### **ATTORNEY GENERAL'S REPORT**

Mr. Steward stated he had nothing further to report. Mr. Scheidel stated that he and Tim Benton of the Attorney General's Office had been working on old appeal files as a new Administrative Law Judge had recently taken over those cases and wanted to clear the backlog. He reported that the process was working well.

### **CLAIM AUTHORITY**

Mr. Gastineau presented the following claim authority requests:

#### **1. Site Registration 8600894 – Casey's Marketing Co., Clarence**

This site was classified as high risk for the groundwater to plastic water line pathway. There were no low risk pathways. An investigation was to be completed to confirm the existence and

quantity of plastic water line within the actual and modeled plumes. The replacement of PVC within the modeled plume would allow for the reclassification of the site to no further action (NFA). Previous authority to \$75,000 had been granted, and \$76,962.95 was incurred to date. Additional authority to \$200,000 was requested for a site monitoring report (SMR) and replacement of the PVC water line.

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Mr. Larson. Approved 4-0. Mr. Beech abstained from the discussion and the vote.

## **2. Site Registration 9016721 – Kutcher Welding, Oxford**

This site was classified high risk, however the groundwater professional had recommended reclassification to low risk, and the request is pending DNR review. If accepted, the site would be low risk for the groundwater to protected groundwater source pathway and low risk for the potential vapor pathways. Annual monitoring would continue until the target levels and exit criteria were met. Previous approval to \$75,000 had been granted, and \$88,190.73 was incurred to date. Additional authority to \$120,000 was requested for a site monitoring report (SMR) and implementation of the excavation including concrete and well replacement.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 5-0.

## **3. Site Registration 8604079 – Bluff Service Center, Clinton**

This site was classified high risk for the groundwater vapor pathway for three residential sewers. Vapor sampling had failed, and the DNR was requiring corrective action. A soil vapor extraction (SVE) system was recommended. Previous authority to \$75,000 had been granted, and \$74,356.54 was incurred to date. Additional authority to \$210,000 was requested for implementation of the SVE and a SMR.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Beech seconded the motion. Approved 5-0.

## **4. Site Registration 8607462 – Daniel Grothus, Bettendorf**

This Board report was for a non-granular bedrock, low risk site with free product. Another drinking water well was identified in the 2006 monitoring report. It was less than 1,000 feet away and will result in a reclassification to high risk after DNR reviews the report. A Tier III may be possible as the next step. Previous authority to \$75,000 had been granted, and \$84,481.28 was incurred to date. Additional authority to \$150,000 was requested for free product recovery (FPR), a possible corrective action design report (CADR), a possible excavation, and another SMR.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. The Board requested additional information about the site's history to be discussed at the September meeting. Approved 5-0.



**5. Site Registration 8603249 – Al’s Corner Oil Co., Bayard**

This site was classified no further action, however additional Board authority was needed to close the monitoring wells. Previous authority to \$75,000 had been granted, and \$82,812.66 was incurred to date. Additional authority to \$75,500 was requested for monitoring well closure.

Mr. Larson submitted a motion to approve the claim authority, and Mr. Holcomb seconded the motion. Approved 5-0.

**6. Site Registration 8607406 – Messer Oil Co., Lone Tree**

This site was classified low risk with free product. Previous authority to \$75,000 had been granted, and \$82,762.63 was incurred to date. Additional authority to \$130,000 was requested for FPR.

Mr. Beech submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 5-0.

**7. Site Registration 8608909 – Jerry Roney, Huxley**

This site was classified high risk for groundwater vapors and low risk for groundwater ingestion to a potential groundwater source. Previous authority to \$75,000 had been granted, and \$83,068.33 was incurred to date. Additional authority to \$225,000 was requested for a possible CADR and implementation of the CADR, as well as, a SMR and FPR.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 5-0.

**8. Site Registration 8609364 – Iowa Dept of Transportation, Waukon**

This was the second Board report for this site that was classified as high-risk monitor-only following the Tier III, when the last Board report was submitted. In the most recent SMR, a down gradient well that had been previously non-detect had a hit. After additional source drilling to see if contamination was moving, they did find additional soil contamination. Because this was a non-granular bedrock site, an excavation was necessary. Deep city drinking water wells were located across the street, and one of those was failing due to age, and therefore higher costs were possible in the future, if that well should be replaced. Previous authority to \$175,000 had been granted, and \$116,935.68 was incurred to date. Additional authority to \$350,000 was requested for a possible CADR, a soil excavation, and a SMR.

Mr. Holcomb submitted a motion to approve the claim authority, and Mr. Larson seconded the motion. Approved 5-0.

## **CONTRACTS ENTERED INTO SINCE THE JULY 19, 2007 BOARD MEETING**

Mr. Scheidel noted that the Board had entered into seven new contracts or agreements since the last Board meeting.

1. Reimbursement agreement with Attorney General's Office for FY08.
2. 28E agreement addendum with DNR for UST closure contracts for one year
3. Contract addendum with MSA Professionals for east region UST closures for one year
4. Contract addendum with GeoTek Engineering for west region UST closures for one year
5. Contract addendum with Apex Companies LLC for Rose Hill CRP for one year
6. Contract addendum with GeoTek Engineering for Walnut CRP for one year
7. Contract addendum with Seneca Environmental for Akron CRP for one year

## **OTHER ISSUES**

Mr. Scheidel noted that the next Board meeting was scheduled for Thursday, September 27, 2007. Due to conflicts, alternative dates would be considered.

At the September meeting, the Board would discuss loss portfolio transfer questions, and Mr. Scheidel offered to bring in an Aon representative to discuss examples of LPT's and considerations of such at a later Board meeting, possibly in October. Mr. Beech suggested the Board discuss public policy concerns regarding the completion of a large LPT, as well.

## **CORRESPONDENCE AND ATTACHMENTS**

Ms. Voss asked if there was any further business, and there being none, Mr. Holcomb moved to adjourn, and Mr. Beech seconded the motion. By a vote of 5-0, the Board adjourned at 11:24 A.M.

Respectfully Submitted,



Scott M. Scheidel  
Administrator